IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 663 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GENERAL MANAGER

Versus

ATUL M SONI

Appearance:

1. Special Civil Application No. 663 of 1992

MR GM JOSHI for Petitioner No. 1-2

MR.T.R.Mishra for respondent(absent)

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/06/2003

ORAL JUDGEMENT

Learned Advocate Mr. Joshi appears for the petitioners, but none appears on behalf of the respondent.

1. Heard learned Counsel and perused the relevant papers on record.

2. This is a petition seeking for writ of certiorari by quashing the judgment and order dated 3rd August, 1991 passed by the Industrial Court in Appeal (IC) 25/1991. It is stated that the respondent-employee filed Application no.T 401/1985 under the provisions of the Bombay Industrial Relations Act, 1946, alleging that the respondent was serving at Vatva Branch of the petitioner-bank with effect from 10th November,1980, and he was paid Rs.7/- as daily wages initially, and from 1984 he was paid daily wages of Rs.11/-. He was performing his duties for full 12 months. His services were terminated with effect from 24th February, 1985 by oral order without giving any notice. Hence, the respondent sent a letter dated 5th August, 1985. Thereafter, the aforesaid application was filed by the respondent-employee.

3. The petitioner-bank filed its reply at Exh.4 before the Labour Court and it was stated therein that the application of the respondent was not in time, and it was not in accordance with the provisions of the Bombay Industrial Relations Act,1946. The fact was denied that the respondent had joined services with effect from 10th November, 1980. It was stated that the respondent was given the work for some days as a reliever on leave vacancy of a Peon who was on leave and the respondent had not worked continuously for 12 months and he was not entitled to the salary or allowances as a regular employee. When any regular Peon was remaining absent, the respondent was accommodated on leave vacancy, and therefore, he was not entitled to any benefits available to regular employees.

4. The respondent examined himself at Exh.7 and one Modi who was a customer of the bank was also examined. The Labour Court after considering the entire material on record found that it was not proved that the respondent was appointed on the post of a Clerk. He was performing his duties as a Peon on leave vacancy. Relying on the statement which was given by the respondent in his deposition, the respondent was never taken in service on regular basis as a Peon, but he was called on leave vacancy of Peon whenever any Peon was on leave. Hence, it was held by the Labour Court that the respondent had not proved that he was working continuously on a permanent post or that he was performing any work of a permanent nature. It was for the petitioner-bank to decide as to engaging any person on leave vacancy and the person who is appointed on leave vacancy was not having any right on a permanent post. The Labour Court after considering the entire material on record, dismissed the

application filed by the respondent vide order dated 19th February, 1991.

5. The respondent being aggrieved by the order passed by the Labour Court preferred appeal being Appeal no.1625/1991 before the Industrial Court under Section 84 of the Bombay Industrial Relations Act, 1946. The Industrial Court allowed the appeal and directed the petitioner to reinstate the respondent with full back wages and awarded costs of Rs.100/-. Against that order, this petition has been preferred by the petitioner-bank.

6. The learned Counsel for the petitioner contended that the Industrial Court has exceeded in exercising its jurisdiction vested in it. Hence, the impugned judgment and order are liable to be quashed and set aside. On a legal principle, the respondent was not a permanent employee of the bank nor he was working on a permanent post and performing work of a permanent nature. The respondent was, therefore, not entitled to any relief prayed for by him and the order passed by the appellate Court is inherently illegal and not sustainable in the eye of law. The findings recorded by the appellate Court are also totally perverse and not sustainable in the eye of law. The contention of the learned Counsel for the petitioner is that the appellate Court has erroneously held that the Labour Court has passed an order for producing the record regarding service of the respondent-employee but that order has not been followed and complied with by the petitioner-bank. As such, the petitioner has flouted the order and the Labour Court ought to have drawn adverse inference against the petitioner-bank. The witness examined by the respondent Mr. Modi, has stated in his statement that he has seen the respondent working continuously in the bank. The petitioner-bank has breached the Standing Orders by not issuing appointment order or appointment letter to the employee as a Peon or Clerk. The bank has not filed any material or evidence on record. On the other hand, the bank has flouted the orders of the Court. Initially, the respondent was paid Rs7/-per day and later on Rs.11/-per day. Thus, the bank had exploited the workman. In absence of any document, it was not possible to come to a final decision about the actual basis on which the respondent-employee had worked. As the employee has worked for about five years, he is entitled to be reinstated and the termination order passed by the Bank is illegal.The learned Counsel for the petitioners pointed out from the judgment of the Labour Court wherein statement of the employee has been quoted as under:

" I was doing the work of Peon or Clerk on the days on which Peon or Clerk was on leave. I was paid for those days for which I had worked. I was not given wages for the rest days. I was not given written intimation every day for work. I was called by the Sub Agent personally. I was paid wages by vouchers. No attendance was taken. I was not paid for holidays. In a month I would get 8 to 10 days wages. When I was going out I was not sending any leave report. I did not apply for the post as required by Rules. There was no interview for the appointment nor any appointment order was issued and it is true that I was paid by voucher on scattered days."

7. On the basis of the statement made by the respondent-employee, the learned Counsel for the petitioner submitted that no question arises for producing the record when the evidence itself does not prove that the person concerned was entitled for reinstatement or that he had worked for a period of more than 240 days in a year. Even on the basis of the admission of the respondent, he was getting 8 to 10 days work in a month. At the most, he was getting work of 110 or 120 days in a year which is not in accordance with the provisions of law for establishing that he has worked for a period of more than 240 days. As such, the observation by the appellate Court regarding the adverse inference to be drawn was totally illegal and not justifiable on the basis of the material on record.

8. Heard learned Advocate for the petitioner and perused the relevant papers on record. As the respondent was not given permanent work, he was a person to be substituted on a leave vacancy of Clerk on Peon whenever the Peon or Clerk was not available and only then work was given to the respondent. As such, it is not against the Standing Orders. If work is given on a contract basis or for a few days on relievable basis, no question arises for taking inference that the bank has breached the Standing Orders. So far as the exploitation of the respondent-employee by the petitioner-bank is concerned, it is nowhere proved by the respondent-employee that the payment made to him was less than the minimum wages prescribed by the law. If initially, Rs.7/-per day per day was paid to him and later on Rs.11/-per day was paid to him that would not come within the meaning of minimum wages prescribed under the Minimum Wages Act. As the respondent was not a regular employee, the provisions of the Minimum Wages Act would not be applicable as well. The respondent was being called on a particular day to work on casual basis as and when the Peon or Clerk was on leave and not available. So far as the observation of

the Lower Appellate Court that in absence of any document, it was not possible to come to a final conclusion about the actual days on which the respondent-employee had worked is concerned, it is the duty of the employee himself to prove as to how many days he had worked. Admittedly, he was getting work of 8 to 10 days in a month. On that basis, the Lower Appellate Court was required to give finding that the respondent-employee was working less than 240 days in a year. Hence, the discontinuance in engaging the respondent-employee to work on leave vacancy was fully justified. As such the order of the lower appellate authority is erroneous on facts and in law, hence deserves to be set aside. By an order dated 31-1-1992 while admitting the petition, the interim relief as regards reinstatement was rejected and the payment of amount of back wages was stayed. As such, the respondent-employee must have been working pursuant to the order of the Lower Appellate Court. Hence, it would not be proper at this stage to discontinue or to remove the respondent-employee from services. So far as the question regarding back wages is concerned, the respondent was not regularly appointed, no letter of appointment was issued and no attendance was recorded. He was paid by voucher whenever he worked. Admittedly, he worked for 8 to 10 days in a month. As such, he was only a casual worker and for that purpose, he cannot be entitled to back wages as allowed by the Lower Appellate Court.

9. In view of the foregoing discussion, the order passed by the Lower Appellate Court regarding back wages is set aside and in the facts and circumstances, order of lower appellate Court regarding reinstatement of the respondent-employee is maintained and as such the petition is allowed in part. The petitioner bank is directed to give continuity of services to the respondent-employee from the date of the order of the Labour Court.

(Kundan Singh J.)

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